

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	Docket No. FIFRA 07-2010-0011
	)	
Albaugh, Incorporated	)	
1525 NE 36 <sup>th</sup> Street	)	CONSENT AGREEMENT
Ankeny, IA 50021	)	AND
	)	FINAL ORDER
	)	
Respondent	)	

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and Albaugh, Incorporated (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules).

**FACTUAL ALLEGATIONS**

**Jurisdiction and Statutory Requirements**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C.

§ 136j.

**Parties**

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.

4. The Respondent is Albaugh, Incorporated, a formulator and packager of agrochemical products located at 1525 NE 36<sup>th</sup> Street, Ankeny, Iowa.. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

**Section III**

**Statutory and Regulatory Background**

5. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "pest" to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).

6. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive, and (having so received)

deliver or offer to deliver.

8. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is “misbranded” if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of FIFRA, are adequate to protect health and the environment.

9. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is “misbranded” if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of FIFRA, is adequate to protect health or the environment.

10. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide which is adulterated or misbranded.

#### General Allegations

11. On March 4, 2010, five Notice of Arrivals (NOA) were submitted to the Environmental Protection Agency (EPA) representing five shipments of 2-4-D Acid (EPA Registration No. 46146-3) into the United States by Respondent.

12. On March 24, Respondent notified EPA that an additional shipment of 2-4-D Acid (EPA Registration No. 46146-3) would be arriving in the United States. On March 29, 2010, a Notice of Arrival (NOA) was submitted to the Environmental Protection Agency (EPA) representing an additional shipment of 2-4-D Acid (EPA Registration No. 46146-3) into the United States by Respondent.

13. Documentation of the product label placed on each of the bags of 2-4-D Acid

contained in each of the shipments was submitted to EPA for review by electronic mail on March 9, 2010.

14. The product label provided did not contain the required first aid statements contained in the EPA-accepted label for the product.

#### Violations

15. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

#### Count 1

16. The facts stated in paragraphs 11-14 are realleged and incorporated as if fully stated herein.

17. On or about March 15, 2010, Respondent imported 114 bags, each containing 1,940 pounds of 2-4-D Acid, EPA Registration Number 46146-3, to the Kansas City Port of Entry, Entry Number 581-5525350-1.

18. The pesticide referenced in Paragraph 17 was misbranded in that it was distributed by Respondent without the required labeling for the product.

19. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed a misbranded pesticide.

#### Count 2

20. The facts stated in paragraphs 11-14 are realleged and incorporated as if fully stated herein.

21. On or about March 26, 2010, Respondent imported 95 bags, each containing 1,940

pounds of 2-4-D Acid, EPA Registration Number 46146-3, to the Kansas City Port of Entry, Entry Number 581-5525385-1.

22. The pesticide referenced in Paragraph 21 was misbranded in that it was distributed by Respondent without the required labeling for the product.

23. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed a misbranded pesticide.

Count 3

24. The facts stated in paragraphs 11-14 are realleged and incorporated as if fully stated herein.

25. On or about March 29, 2010, Respondent imported 171 bags, each containing 1,940 pounds of 2-4-D Acid, EPA Registration Number 46146-3, to the Kansas City Port of Entry, Entry Number 581-5525724-7.

26. The pesticide referenced in Paragraph 25 was misbranded in that it was distributed by Respondent without the required labeling for the product.

27. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed a misbranded pesticide.

Count 4

28. The facts stated in paragraphs 11-14 are realleged and incorporated as if fully stated herein.

29. On or about April 5, 2010, Respondent imported 133 bags, each containing 1,940 pounds of 2-4-D Acid, EPA Registration Number 46146-3, to the Kansas City Port of Entry, Entry Number 581-5525725-4.

30. The pesticide referenced in Paragraph 29 was misbranded in that it was distributed by Respondent without the required labeling for the product.

31. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed a misbranded pesticide.

Count 5

32. The facts stated in paragraphs 11-14 are realleged and incorporated as if fully stated herein.

33. On or about April 14, 2010, Respondent imported 342 bags, each containing 1,940 pounds of 2-4-D Acid, EPA Registration Number 46146-3, to the Kansas City Port of Entry, Entry Number 581-5525852-6.

34. The pesticide referenced in Paragraph 33 was misbranded in that it was distributed by Respondent without the required labeling for the product.

35. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed a misbranded pesticide.

Count 6

36. The facts stated in paragraphs 11-14 are realleged and incorporated as if fully stated herein.

37. On or about April 20, 2010, Respondent imported 171 bags, each containing 1,940 pounds of 2-4-D Acid, EPA Registration Number 46146-3, to the Kansas City Port of Entry,

Entry Number 581-5526021-7.

38. The pesticide referenced in Paragraph 37 was misbranded in that it was distributed by Respondent without the required labeling for the product.

39. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed a misbranded pesticide.

### **CONSENT AGREEMENT**

It is hereby agreed and accepted by the parties, that:

1. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all

regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in the Final Order. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty described in Paragraph 1 of the Final Order below, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury on the unpaid balance until such civil penalty and accrued interest are both paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any



amount not paid within ninety (90) days of the due date.

**FINAL ORDER**

1. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified check, a civil penalty, for the violations cited herein, in the amount of Twenty-seven Thousand Three Hundred and Sixty Dollars (\$27,360.00). Payment will be made within thirty (30) days of the effective date of this Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

3. The payment shall reference Docket Number, FIFRA 07-2010-0011 and In the Matter of Albaugh, Inc. Copies of the check shall be forwarded to:

Kent Johnson  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Kathy Robinson  
Regional Hearing Clerk  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5<sup>th</sup> Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By:

*Karen A. Flourney*  
for William A. Spratlin  
Director  
Water, Wetlands, and Pesticides Division

Date:

4/21/10

By:

*Kent Johnson*  
Kent Johnson  
Attorney  
Office of Regional Counsel

Date:

4/16/10

Albaugh, Inc.  
Docket No. FIFRA 07-2010-0011

RESPONDENT:  
ALBAUGH, INCORPORATED

By: Shunt J. West

Title: Vice President

Date: April 15, 2010

IT IS SO ORDERED. This Order shall become effective immediately.



ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region VII

Date: May 3, 2010

IN THE MATTER OF Albaugh, Incorporated, Respondent  
Docket No. FIFRA-07-2010-0011

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Kent Johnson  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Stuart I. Feldstein, Vice President  
Albaugh, Incorporated  
1525 NE 36<sup>th</sup> Street  
Ankeny, Iowa 50021

Dated: 5/4/10

  
\_\_\_\_\_  
Kathy Robinson  
Hearing Clerk, Region 7